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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6785

DATE COMPLAINT FILED: February 19, 2014

DATE OF NOTIFICATION: February 26, 2014

LAST RESPONSE RECEIVED: April 18, 2014

DATE ACTIVATED: June 6, 2014

ELECTION CYCLE: 2014

EXPIRATION OF SOL: July 8, 2018 –

February 4, 2019

COMPLAINANT:

Scott Kalota

RESPONDENTS:

Kwasman for Congress and Bret Summers in his
official capacity as treasurer
Adam C. Kwasman

RELEVANT STATUTES
AND REGULATIONS:

52 U.S.C. § 30101(2)¹
52 U.S.C. § 30102(e)(1)
52 U.S.C. § 30103(a)
52 U.S.C. § 30104(a)(2)(B)
52 U.S.C. § 30116(f)
52 U.S.C. § 30120
52 U.S.C. § 30125(e)(1)(A)
11 C.F.R. § 100.72
11 C.F.R. § 100.131
11 C.F.R. § 110.3(d)
11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter involves allegations that Adam C. Kwasman, an Arizona state representative and 2014 Congressional candidate, violated the Act by filing his Statement of Candidacy late, and that his principal campaign committee, Kwasman for Congress, violated the Act by filing its

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended ("the Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

1 Statement of Organization and 2013 Year-End Report late, accepting excessive contributions,
2 using assets from Kwasman's state campaign to support his federal campaign, and including
3 improper disclaimers on campaign materials.

4 Respondents argue that the Commission should dismiss the Complaint because it either
5 fails to allege violations of the Act or Commission regulations, alleges only minor violations, or
6 alleges violations that will be addressed by the Commission's Reports Analysis Division
7 ("RAD") and Administrative Fines Program. We recommend that the Commission dismiss the
8 allegations and caution the Respondents regarding their disclosure obligations. *See Heckler v.*
9 *Chaney*, 470 U.S. 821 (1985).

10 II. FACTUAL AND LEGAL ANALYSIS

11 A. Statement of Candidacy and Statement of Organization

12 Adam C. Kwasman is an Arizona state representative and was a 2014 candidate for the
13 Republican nomination in Arizona's First Congressional District.² On July 8, 2013, Kwasman
14 announced that he was forming an exploratory committee for a potential Congressional
15 candidacy. Resp. at 1 (Apr. 18, 2014). He publicly declared his candidacy on October 21, 2013,
16 and filed a Statement of Candidacy with the Commission on November 8, 2013, designating
17 Kwasman for Congress (the "Committee") as his principal campaign committee. The
18 Committee filed its Statement of Organization on December 9, 2013. Bret Summers is treasurer
19 of the Committee.³

² Kwasman lost the August 26, 2014 primary election.

³ Adam C. Kwasman was designated as the treasurer of the Committee when it filed its Statement of Organization and he remained treasurer during the events at issue in this matter. On August 14, 2014, the Committee amended its Statement of Organization to designate Bret Summers as treasurer.

1 The Complaint alleges that Kwasman filed his Statement of Candidacy late. Compl. at 1
2 (Feb. 19, 2014). The Complaint argues that: (1) Kwasman conducted campaign activity over a
3 protracted period of time by making statements referring to himself as a candidate and using
4 public political advertising to announce his intention to run for Congress, without filing a
5 Statement of Candidacy; (2) Kwasman failed to file a Statement of Candidacy after raising over
6 \$5,000; and (3) even if Kwasman did not become a candidate until his public announcement on
7 October 21, 2013, Kwasman still filed his Statement of Candidacy four days late. *Id.* at 1-3. The
8 Complaint also alleges that the Committee's Statement of Organization was filed late. *Id.* at 2.

9 The Response asserts that the Complaint fails to identify any specific statements,
10 advertisements, or events indicating that Kwasman became a candidate before he publicly
11 declared his candidacy. Resp. at 1. The Response also contends that the four months that
12 Kwasman tested the waters was not a "protracted period of time." *Id.* at 1-2. Further, the
13 Response asserts that Kwasman was not required to file his Statement of Candidacy once he
14 raised \$5,000 because the Commission has stated that an individual can raise and spend more
15 than \$5,000 without registering and reporting, so long as his or her activities are confined to the
16 scope of the testing-the-waters exemptions. *Id.* at 3. Finally, the Response contends that the late
17 filings do not warrant Commission investigation because they did not cross a reporting period
18 and did not frustrate the public's disclosure interest. Resp. at 2-3.

19 Under the Act, an individual must file a Statement of Candidacy within fifteen days of
20 becoming a candidate, that designates the candidate's principal campaign committee. 52 U.S.C.
21 § 30102(e)(1) (formerly 2 U.S.C. § 432(e)(1)); *see also* 11 C.F.R. § 101.1(a). The principal
22 campaign committee must file a Statement of Organization no later than ten days after the
23 candidate's designation. 52 U.S.C. § 30103(a) (formerly 2 U.S.C. § 433(a)).

1 An individual becomes a "candidate" when he or she receives or makes in excess of
2 \$5,000 in contributions or expenditures. 52 U.S.C. § 30101(2) (formerly 2 U.S.C. § 431(2)).
3 However, the Commission's regulations provide that the terms "contribution" and "expenditure"
4 do not include funds or payments made solely to determine whether an individual should become
5 a candidate. 11 C.F.R. §§ 100.72(a); 100.131(a). Permissible "testing the waters" activities
6 include, but are not limited to, conducting polls, making telephone calls, and traveling. *Id.*
7 So long as an individual is "testing the waters," he or she is not required to file a Statement of
8 Candidacy with the Commission. When an individual raises or spends more than \$5,000 *and*
9 engages in activities indicating that he or she has decided to run for a particular office, the
10 "testing the waters" exemption is no longer available. Examples of activities that indicate that an
11 individual has decided to become a candidate include, but are not limited to: (1) the individual
12 uses general public political advertising to publicize his or her intention to campaign for federal
13 office; (2) the individual raises funds in excess of what could reasonably be expected to be used
14 for exploratory activities, or undertakes activities designed to amass campaign funds that would
15 be spent after he or she becomes a candidate; (3) the individual makes or authorizes written or
16 oral statements that refer to him or her as a candidate for a particular office; (4) the individual
17 conducts activities in close proximity to the election or over a protracted period of time; and
18 (5) the individual has taken action to qualify for the ballot under state law. 11 C.F.R.
19 §§ 100.72(b); 100.131(b).

20 Kwasman asserts that he was testing the waters from July 8, 2013 (when he formed an
21 exploratory committee) to October 21 (when he publicly declared his candidacy). The
22 Complaint generally alleges that Kwasman was conducting campaign activity over a "protracted
23 period of time," including referring to himself as a candidate and using public political

1 advertising to announce his intention to run. Compl. at 1. The Complaint specifically points to a
2 communication titled "CD-1 Primary Voter Guide" that was posted both on the *Sonoran*
3 *Alliance*, a political blog, and Kwasman's own social media accounts on October 16, 2013.
4 Compl., Appendix A. The guide contrasts Kwasman's positions on a number of policy issues
5 with those of Andy Tobin, another Arizona Representative running for the Republican
6 nomination in Arizona's First Congressional District. The voter guide states "THE CHOICE IS
7 CLEAR!" and "Adam Kwasman Congress. Proven Conservative Leadership." *Id.*

8 The record shows that Kwasman was a candidate at least as early as October 16, 2013,
9 because the content of the voter guide post refers to Kwasman as a candidate, or at the very least
10 publicized his intention to campaign for federal office.⁴ See 11 C.F.R. §§ 100.72(b); 100.131(b).
11 Specifically, the document is titled as a "Primary Voter Guide" for the First Congressional
12 District, and contains the campaign slogan "Adam Kwasman Congress Proven Conservative
13 Leadership." The "voter guide" also lauds Kwasman's legislative actions and views, and
14 criticizes the legislative actions and views of another candidate in the race, concluding that "THE
15 CHOICE IS CLEAR!" In short, the content of the advertisement indicates that Kwasman was
16 already running for Congressional office. As a result, Kwasman became a candidate at least as

⁴ Contrary to the Complaint's assertion, the Commission has determined that four months is not an usually "protracted period of time" that, by itself, supports a conclusion that Kwasman was a candidate before his formal announcement. This four-month period is similar in duration to other matters where the Commission did not conclude that the testing the waters period was a "protracted period of time." See *e.g.*, MUR 4759 (Maloof) (candidate tested the waters for over four months), MUR 5930 (Schuring) (candidate tested the waters for at least four months), and MUR 5934 (Thompson) (candidate tested the waters for over three months).

1 early as October 16,⁵ when he posted the CD-1 Primary Voter Guide because he had already
2 surpassed the \$5,000 contribution threshold for candidate status on October 1, 2013. *See*
3 Kwasman for Congress, Amended 2013 Year-End Report (Feb. 4, 2104).

4 Thus, Kwasman was required to file his Statement of Candidacy no later than October 31,
5 and the Committee was required to file a Statement of Organization no later than November 11,
6 but they were not filed until November 8 (eight days late) and December 9 (28 days late),
7 respectively. Further, even if Kwasman did not become a candidate until his public
8 announcement on October 21, 2013, Kwasman still filed his Statement of Candidacy four days
9 late, and the Committee filed its Statement of Organization 21 days late. Compl. at 2-3.

10 However, given the short period of time between the date that the statements were due
11 and the date that they were filed, and that the late filing of the Statement of Candidacy and
12 Statement of Organization did not cause the Committee to miss the filing of a scheduled
13 disclosure report, we do not believe that this issue warrants further Commission pursuit. *See*
14 *e.g.*, MUR 6282 (EPS dismissal where Statement of Candidacy filed more than 30 days late but
15 did not result in the candidate missing the filing of a scheduled report); MUR 6374 (Roly Arrojo
16 for Congress) (EPS dismissal where Statement of Candidacy filed 60 days late and missing
17 disclosure report contained little financial activity); *compare* MUR 6449 (Bruning) (Commission

⁵ Kwasman's publicly available Facebook and Twitter pages similarly refer to Kwasman as a candidate as early as September 19, 2013, when a post shows a picture of a cake decorated with the slogan "Kwasman for Congress" with the caption "Victory will surely be sweet!" @AdamKwasman, TWITTER (Sept. 19, 2013, 9:43 PM), <https://twitter.com/AdamKwasman/status/380915002787377152/photo/1>. *See* 11 C.F.R. § 100.72(b)(3). An October 15, 2013 Twitter post contains a picture of people attending a meeting where Kwasman spoke with the caption "This is why we are going to win the primary and then beat Kirkpatrick. Welcome to Oro Valley on a Tuesday afternoon." @AdamKwasman, TWITTER (Oct. 15, 2013, 3:08 PM), <https://twitter.com/AdamKwasman/status/390237734645673986>. Another post on October 17, 2013 states, "Send proven conservatives to Congress" and contains the link to Kwasman's exploratory committee website. @AdamKwasman, TWITTER (Oct. 17, 2013, 10:06 AM), <https://twitter.com/AdamKwasman/status/390886613259411456>. The statements, however, were made in close proximity to the distribution of the CD-1 Primary Voter Guide or before Kwasman for Congress reported surpassing the \$5,000 threshold on October 1, and thus do not change our recommendation.

1 found reason to believe that committee violated the Act where Statement of Candidacy filed 19
2 days late caused committee to miss filing its 2010 Year-End Report with over \$850,000 in
3 financial activity). Accordingly, we recommend that the Commission dismiss this allegation.
4 *See Heckler*, 470 U.S. 821.

5 **B. 2013 Year-End Report**

6 The Committee filed its 2013 Year-End Report on February 1, 2013. The Complaint
7 alleges that the Committee filed its 2013 Year-End Report one day late. Compl. at 2.
8 Respondents assert that filing the 2013 Year-End Report eleven hours late does not warrant
9 Commission investigation and can be addressed through the Administrative Fines Program.
10 Resp. at 3.

11 Under the Act, each treasurer of a principal campaign committee for a Congressional
12 candidate must, no later than January 31 of the following calendar year, file a Year-End Report
13 for the calendar quarter ending December 31. 52 U.S.C. § 30104(a)(2)(B) (formerly 2 U.S.C.
14 § 434(a)(2)(B)). Thus, when the Committee filed its report on February 1, it was one day late.
15 Because it was only one day late, however, it does not warrant the use of additional resources to
16 pursue this allegation. Thus, we recommend that the Commission dismiss this allegation with
17 caution. *See Heckler*, 470 U.S. 821. As the Committee has ongoing reporting obligations, and
18 both the Statement of Candidacy and Statement of Organization were filed late, we recommend
19 that the Commission caution the Respondents regarding the timely filing of disclosure reports.⁷

⁷ See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,546 (Mar. 16, 2007) ("dismissal with admonishment" appropriate where complaint "convincingly alleges a violation, but the significance of the violation is not sufficient to warrant further pursuit by the Commission.").

C. Excessive Contributions

The Committee's original 2013 Year-End Report discloses \$10,000 contributions from three individuals: Alice Baker on November 22, 2013, Dwight Kadar on December 22, 2013, and Michael Rusing on October 1, 2013. Kwasman for Congress, 2013 Year-End Report at 5, 13, 21 (Feb. 1, 2014). Three days later, the Committee filed an amended 2013 Year-End Report reducing each of these contributions to \$1,000. Kwasman for Congress, Amended 2013 Year-End Report at 6, 14, 23 (Feb. 4, 2014). The amended report also discloses a \$1,000 disbursement to Michael Rusing on October 1, 2013, with no purpose listed. *Id.* at 47. The committee disclosed no refunds of the \$10,000 contributions.

The Complaint alleges that the Committee violated the Act by accepting the three \$10,000 excessive contributions. Compl. at 2. The Response contends that the Committee's acceptance of three unidentified excessive contributions does not warrant Commission investigation and can be addressed through RAD and further amendments by the Committee. Resp. at 3.

The Act prohibits candidates from accepting contributions in excess of the Act's limitations. 52 U.S.C. § 30116(f) (formerly 2 U.S.C. § 441a(f)). For the 2013-2014 election cycle, individuals are permitted to contribute a maximum of \$2,600 to a candidate or candidate committee per election. 52 U.S.C. § 30116(a)(1)(A) (formerly 2 U.S.C. § 441a(a)(1)(A)). Although the Committee's Response does not explain the discrepancy, it appears that the initial disclosure of the \$10,000 contributions may simply have been a typographical error, as the amended report reduces all three contributions to permissible amounts without disclosing refunds to the contributors; this conclusion is consistent with the assessment of the contributions by

1 RAD.⁸ Given that the alleged excessive contributions appear to be typographical errors that have
2 been corrected in the committee's reports, we recommend that the Commission dismiss the
3 allegation that the Committee accepted excessive contributions. *See Heckler*, 470 U.S. 821.

4 **D. Use of State Campaign Assets**

5 The Complaint alleges that Kwasman used assets from his state legislative campaign to
6 support his congressional campaign. Compl. at 3. In support of its allegation, the Complaint
7 attaches the first two photographs in Appendix C, which show the candidate and supporters
8 holding signs. These photographs also appear on Kwasman's publicly available Twitter feed. In
9 the first photograph, only Kwasman's name is visible on a sign. The photograph is from a post
10 on November 2, 2013, that includes the caption "A great night at the Pima County Tea Party.
11 Thanks to our volunteers and the amazing outpouring of support! #AZ01." @AdamKwasman,
12 TWITTER (Nov. 2, 2013, 8:16 PM), [https://twitter.com/AdamKwasman/status/](https://twitter.com/AdamKwasman/status/396838379288936448)
13 [396838379288936448](https://twitter.com/AdamKwasman/status/396838379288936448). In the second photograph, the signs read "Adam Kwasman State
14 Representative." Compl., Appendix C. This photograph is from a post on December 14, 2013,
15 that contains the caption, "The best grassroots parade team in #AZ01!" @AdamKwasman,
16 TWITTER (Dec. 14, 2013, 10:39 AM), [https://twitter.com/AdamKwasman/status/](https://twitter.com/AdamKwasman/status/411928467219836930/photo/1)
17 [411928467219836930/photo/1](https://twitter.com/AdamKwasman/status/411928467219836930/photo/1).

18 The Complaint gives no other information about the events or state campaign assets that
19 Kwasman's federal campaign may have used. The Response asserts that the Complaint fails to
20 identify any events at which Kwasman may have used assets paid for by his state legislative
21 campaign committee to support his congressional campaign, and fails to identify where and

⁸ RAD explained to the Office of General Counsel that it considers the three contributions at issue, that were originally reported as \$10,000, to be typographical errors resolved by the amended report that changed the amounts to \$1,000.

1 when the photographs referring to Kwasman's service as a state representative were taken. Resp.
2 at 3.

3 Federal candidates and officeholders, or entities directly or indirectly established,
4 financed, maintained or controlled by them, are prohibited from soliciting, receiving, directing,
5 transferring, or spending funds that do not comply with the limitations and prohibitions of the
6 Act. 52 U.S.C. § 30125(e)(1)(A) (formerly 2 U.S.C. § 441i(e)(1)(A)). In addition, Commission
7 regulations state that transfers of funds or assets from a candidate's campaign account for a non-
8 federal election to his or her principal campaign committee for a federal election are prohibited.
9 11 C.F.R. § 110.3(d).

10 Based on the available information, the only apparent potential use of state campaign
11 resources was the signs referring to Kwasman's as a state representative, the value of which is
12 likely minimal.⁹ Given the lack of information regarding these events and other state campaign
13 assets that may have been used by Kwasman's federal committee, and the likely *de minimis*
14 value of the campaign signs, we recommend that the Commission dismiss the allegation. *See*
15 *Heckler*, 470 U.S. 821.

16 **E. Disclaimer**

17 Finally, the Complaint alleges that Kwasman and volunteers for the Committee
18 distributed campaign materials that included the disclaimer "Paid for by Kwasman for Congress,
19 Exploratory," a committee not registered with the Commission. Compl. at 3. The Complaint
20 references campaign materials in Appendix C. The third and fourth photographs in Appendix C
21 are federal campaign materials referencing Kwasman's congressional candidacy, but only the

⁹ We also reviewed Kwasman for Arizona's disclosure reports and they do not disclose significant contributions or expenditures that would, on their face, raise questions about whether Kwasman used state committee funds for his federal campaign. *See* <http://www.azsos.gov/cfs/FilerDetail.aspx?id=201200127>.

1 fourth photograph, a sign describing Kwasman's accomplishments and views, contains the
2 legible disclaimer "Paid for by Kwasman for Congress, Exploratory." Compl., Appendix C.
3 The Response explains that "Kwasman for Congress, Exploratory" was a 527 organization
4 organized for Kwasman's testing-the-waters activities and was not required to register with the
5 Commission. Resp. at 4.

6 Under the Act, all public communications¹⁰ by a political committee and all public
7 communications by any person that expressly advocate the election or defeat of a clearly
8 identified candidate must contain a disclaimer. 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d);
9 11 C.F.R. § 110.11(a)(2). A communication that is paid for and authorized by a candidate or
10 candidate's committee must state that it is paid for by the authorized committee.
11 11 C.F.R. § 110.11(b)(1). A communication that is authorized by a candidate, the candidate's
12 authorized committee, or an agent, but is paid for by any other person, must state that the
13 communication is paid for by another person and is authorized by such candidate, committee, or
14 agent. *Id.* § 110.11(b)(2).

15 The campaign materials at issue, *i.e.*, the signs shown in the third and fourth photographs
16 in Appendix C, likely qualify as a form of "general public political advertising," however, it is
17 unclear whether Kwasman was a candidate at the time the signs were distributed. Regardless of
18 whether Kwasman was a candidate, the materials did contain a partial disclaimer stating that
19 Kwasman for Congress, Exploratory —which the Response identifies as a registered 527
20 organization — paid for the communications. It is also unlikely that the public was misled about

¹⁰ A "public communication" means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising. 52 U.S.C. § 30101(22) (formerly 2 U.S.C. § 431(22)); 11 C.F.R. § 100.26.


whether the candidate authorized the communication. Accordingly, we recommend that the Commission dismiss this allegation. *See e.g.*, MUR 6683 (Fort Bend County Democratic Party) (dismissing disclaimer violation where disclaimer was incomplete but contained some information identifying the payor); MUR 6633 (Republican Majority Campaign PAC) (same); MUR 6438 (Arthur B. Robinson) (same); MUR 6270 (Rand Paul Committee) (same); MUR 6278 (Segers) (same); *see also Heckler*, 470 U.S. 821.


III. RECOMMENDATIONS


1. Dismiss the allegations that Adam C. Kwasman violated 52 U.S.C. §§ 30102(e)(1) and 30125(e), (f) and issue a letter of caution;
2. Dismiss the allegations that Kwasman for Congress and Bret Summers in his official capacity as treasurer violated 52 U.S.C. §§ 30103(a) and 30104(a)(2)(B) and issue a letter of caution;
3. Dismiss the allegations that Kwasman for Congress and Bret Summers in his official capacity as treasurer violated 52 U.S.C. §§ 30116(f), 30120, and 30125(e)(1)(A);
4. Approve the attached Factual and Legal Analysis;
5. Approve the appropriate letters; and
6. Close the file.

Date

9-8-14


Kathleen M. Guith
Deputy Associate General Counsel
for Enforcement


William A. Powers
Assistant General Counsel


Kasey S. Morgenheim
Attorney

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